IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 486 OF 2006

BLA Industries private Ltd. ... Petitioners.

V/s.

Foundry Fuel Products Ltd. ... Respondents.

Mr. P. K. Samdhani with Birendra Saraf & Mr.D.R. Mehta i/by Dhruve Liladhar for petitioners.

Mr. Sureil Shah i/by Khaitan & Jayakar for respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 16th April, 2007

ORAL JUDGMENT

The present petition is under Section 9 of the Arbitration and Conciliation Act-1996 (for short,"The Arbitration Act, 1996), filed by the petitioners after taking leave under Clause XII of Letters Patent Act. There is no challenge made to the same. Therefore, though agreement between the parties dated 6th April, 2004, has been executed at Dhanbad, & as petitioners office is at Mumbai, this court has jurisdiction to pass appropriate order.

2. Admittedly, there is an agreement for arbitration between the parties. The petition for constitution of a arbitral Tribunal is pending. The submission is that since the agreement itself is under challenged, therefore, there is no question of constitution of arbitral Tribunal based on such agreement. This submission cannot be the reason to discard the provisions of Section 9 of the Arbitration Act-1996 at this stage.

3. Section 9 itself contemplate that before pending or after the constitution of the Tribunal based on the agreement between the parties, if case is made out, an appropriate order can be passed by the Court having jurisdiction. Therefore, pending the constitution of the Tribunal in the present facts and circumstances of the case, I am of the view that an appropriate order can be passed under Section 9 of the Arbitration Act-1996 as prayed. The submission that unless the validity of agreement is not decided, the application under Section 9 of the Arbitration Act-1996 is not maintainable is not accepted.

4. Under Section 11 of the Arbitration Act-1996, in view of the recent judgment of the Apex Court, the

Court would decide such issues including the validity of the agreement and or of the arbitration clauses.

5. The submissions have been raised by the learned advocate appearing for the respondents that the agreement in question was executed by playing fraud Unless decided and or so declared by the Court, on the face of the record it is binding between the parties. The respondents are not able to dispute the signatures on the basic agreement in question. The Director of the respondents' company has signed the agreement, in terms of the Company Board Resolution dated 31st March, 2004 at Dhanbad. Therefore, prima-facie, this is sufficient to consider the case of the petitioner that there is an agreement between the parties which includes an agreement for referring the disputes arising out of this agreement to be resolved by the three members Arbitral Tribunals.

6. The challenge to the validity and execution of agreement between the parties in question, itself is one of the basic reason to grant the relief as prayed, as the property of the transaction itself needs to be protected pending the constitution of the Tribunal. As averred by the petitioners, there are various

defaults committed of the obligations of loan agreement by the respondents. The respondents failed and inclined to pay the monies of agreement towards the re-payment of the loan. As averred, the respondents have also committed various breaches of the terms and conditions of the said loan agreement. The respondents have failed and neglected to create the second/first charge in respect of the immovable properties and movable properties.

7. The respondents on the contrary, as referred above, though admitted the receipt of monies, made a false and baseless allegations and denied to re-pay, inspite of repeated notices and demands made by the petitioners. In view of this, the petitioner has made out a prima-facie case and balance of conveyance also lies in their favour. The petitioners apprehension that respondents would create third party interest in movable properties and immovable properties including those set out in exhibit "A" has some force, it cannot be overlooked.

8. However, I am of the view that till the constitution of arbitral Tribunal as contemplated

under the agreement and under the Arbitration Act-1996, an ad-interim order in terms of prayer clause (c) as reproduced below should suffice the purpose. It is, therefore, granted accordingly. This order shall continue even after the four weeks from the date of constitution of the Tribunal. The petitioner is at liberty to apply under Section 17 of the Arbitration Act-1996, before the arbitral Tribunal, after its constitution for such appropriate reliefs.

9. The petition is allowed in terms of prayer clause (c). It reads thus:

> "(c) That pending the initiation of the arbitration proceedings, the arbitration proceedings and any award that may be made therein, this Hon'ble Court be pleased to by its order and injunction restrain the respondent by itself, its servants, agents, officers and assigns from in any manner alienating, encumbering, transferring, selling, disposing off, parting with possession of or creating any third party right, title or interest of any nature whatsoever in respect of the immovable and movable properties more particularly set out in Exhibit 'A' hereto or any part thereof and any other properties that may be disclosed on oath by the respondent;"

9. No costs.

[ANOOP V. MOHTA, J.]